



220.0595

(916) 324-6593

January 16, 1985

J - Transfer of Title
Assessor's Parcel No.

Dear :

This is in reply to Mr. S 's December 13, 1984 letter to Mr. James J. Delaney, Chief Counsel, Board of Equalization regarding the above-captioned matter.

In Mr. S 's letter, he requested that we review the correspondence from Ms. J and advise your office as to whether or not a reversion to the old value is possible. The facts, very briefly restated, are that in December 1983, Ms. J changed the names on the deed of the above-referenced property from herself to her three children. This change was made without the advice of counsel after Ms. J received an unsettling medical diagnosis. In her letter of December 4, 1984, she further indicated that she has continued to live in the house, make all mortgage payments, and the children have continued to live with her. They have not contributed any money toward the mortgage payments.

In her December 4, 1984 letter to your office, Ms. J did not specify if the deed from herself to her three children was given to them or if it was retained in her possession. From her statements, a logical inference would be that the deed was created as a type of estate planning device. This would indicate the donative intent behind such action was testamentary rather than inter vivos in nature.

Section 60 of the Revenue and Taxation Code provides that a change in ownership shall occur upon the "transfer of a present interest in real property, including the beneficial use thereof, the value of which is substantially equal to the

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value of the fee interest". In this case, it is quite possible that a present beneficial interest was not transferred from Ms. J to the children and there has been no change in ownership. The standard to be applied would basically consist of whether or not the children received title and were immediately empowered to exercise the full incidents of ownership over the property, i.e., to encumber the property, to lease or rent it and receive rents and profits, to sell the property and receive the proceeds, etc. If the children could not exercise these powers to the exclusion of Ms. J, then you could conclude that a change in ownership between the mother and children did not occur. The determination would, of course, be made by your office based upon the facts. Should such determination be made, Ms. J would be entitled to a refund of all taxes paid as a result of the increase in assessment.

If the deed from Ms. J to her children was a change in ownership, then we are of the opinion that a rescission of the transfer may "relate back" to its formation and dissolve it as though it had never been made. (Long v. Newlin (1956) 144 Cal. App. 2d 509.) Therefore, each party must restore, or offer to restore, to the other all consideration which was received under the contract, upon the condition that the other party do likewise, unless the latter is unable or positively refuses to do so. (Civil Code Section 1691(b).) Upon rescission, the contract becomes a nullity and each of its terms and provisions cease to exist and are not enforceable against the other party. (Holmes v. Steele (1969) 269 Cal. App. 2d 675.)

This would have the result of returning the parties to their original position prior to the reappraisal taking effect. However, it is our opinion that should rescission be resorted to, it can apply only prospectively, and no refund would be available to the parties for the period under which the deed transfer was treated as a change in ownership. This is so since property taxes are determined by the facts as they exist on the lien date. (Doctors General Hospital v. Santa Clara County (1957) 150 Cal. App. 2d 53; Estate of Bakesto (1923) 63 Cal. App. 265; Parr-Richmond Industrial Corp. v. Boyd (1954) 43 Cal. 2d 157.)

Based on the foregoing, a rescission of the transfer can be effectuated by having the children deed the property back to the mother. Once the deed is rescinded, the parties are then placed in the same position they stood before the deed was executed, since the effect of rescission is to extinguish the deed. No refunds of taxes should be made by the county to

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the rescinding party while the transfer was in force. Upon rescission, the real property reverts to its previous base year value and should be enrolled at such value as of the date of the rescission. It would, of course, be factored up per the Proposition 13 limitation.

I trust this is responsive to your inquiry; if I may be of further assistance to you, please do not hesitate to contact me.

Very truly yours,

Gilbert T. Gembacz
Tax Counsel

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3540D

CHANGE IN OWNERSHIP

- | **220.0596 Rescission.** A transfer of real property by a deed which is voidable because it was obtained by means of undue influence results in a change in ownership, but upon the cancellation of the deed by judicial decree, which does not constitute a change in ownership, the value of the property reverts to its previous base year value with appropriate adjustment(s) for inflation. C 12/9/83.